

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

January 15, 2009

A meeting of the Board of Environmental Protection was held on Thursday, January 15, 2009 at the Holiday Inn / Ground Round, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

Board: Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Lissa Widoff and Nancy Ziegler.

Absent: Matt Scott

Vacancy: There is one vacancy on the Board.

<u>Staff:</u>	Lynne Cayting	Bureau of Air Quality
	Andrea Lani	Bureau of Air Quality
	Jeff Crawford	Bureau of Air Quality
	Hetty Richardson	Bureau of Land and Water Quality
	James Cassida	Bureau of Land and Water Quality
	Mike Mullen	Bureau of Land and Water Quality
	Beth Nagusky	Office of the Commissioner

Others: David Littell, Commissioner
Mary Sauer, Assistant Attorney General
Cindy Bertocci, BEP Executive Analyst
Terry Hanson, BEP Administrative Assistant

(Meeting adjourned at approximately 12:30 p.m.)

Draft – Pending Board Approval

**BOARD CONVENED AT 9:00 FOR A PUBLIC HEARING IN THE MATTER OF:
CHAPTER 127, NEW MOTOR VEHICLE EMISSION STANDARDS / AMENDMENTS**

BOARD RESUMED ITS REGULAR MEETING IMMEDIATELY FOLLOWING CLOSE OF THE PUBLIC HEARING

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Performance Measures: Iowa and Minnesota made presentations during a recent National Governor's Association meeting illustrating a 3 to 6 month reduction in permitting timeframes as a result of recent efficiency efforts. Governor Baldacci expressed an interest in information concerning permitting timeframes and efficiencies in Maine. In response to this, the Department compiled its performance data into a brochure. The data indicates that our processing timeframes are shorter than in most other states for which information is available. The Department will produce this summary annually and will include tracking of requests for service to evaluate customer service response goals of the agency.

Board member M. Wing Goodale asked if the Department was going to issue a press release depicting performance results.

The Commissioner explained that the Department may issue a press release concerning this topic and noted that the information will be made available on DEP's web site.

Board member Richard Gould asked about the status of tire pile clean-up.

The Department has completed clean up of all Class A and B sites and work is on-going at Class C sites. Commissioner Littell will follow-up with additional details concerning this topic at a future meeting

Board member Nancy Ziegler asked how the DEP will communicate the needs of Maine as it relates to the new administration's economic stimulus package (e.g. brownfields).

The Department is following the development of the economic stimulus package and Governor Baldacci has provided the Obama administration with information concerning Maine's needs. DEP is currently tracking this initiative and any associated procedures. In an effort to be ready for implementation, DEP is working on amendments to its State Revolving Loan Fund regulations to ensure the ability to utilize this financial resource as soon as it becomes available. Current revolving loan fund requirements mandate a loan, but DEP would like the ability to "forgive" 75% of the funding for compliant projects from a municipality in the stimulus bill. DEP is pursuing the ability to provide grants and/or loan forgiveness to municipalities, otherwise only larger municipalities will be able to receive funding for projects.

Legislative Briefing: The Department developed a briefing packet for the Joint Standing Committee on Natural Resources on Department programs. Highlighted issues included: (a) DEP has removed 6 lakes and ponds from the EPA impaired waters list. Addressing non-point source run-off was the key component to this success. Additionally 12 lakes and ponds were removed from the “watch” list. (b) Tighter ozone standards may require Maine to list two areas as non-attainment - Cadillac Mtn. (at high elevation) due to long range transport and towns within the southern most region of York County. (c) The report also noted that the climate change carbon allowance market has grown 84% to \$100 billion in 2008.

Budget: Emergency Supplemental and the Biennial Budget (FY 10/11) resulted in budget cuts for the DEP in the amount of \$354,000 for both the emergency supplemental and the biennial budgets. A total of 5 positions will be cut in the supplemental emergency budget and an additional 2 positions eliminated in the biennial budget. The DEP’s has 410 authorized positions, down from 461 authorized positions in 2003 and 499 authorized positions in 1995.

Water Classification: DEP has included a provision in the water classification bill to allow the Legislature to reclassify a water body effective at a future date. This language makes it clear that there is Legislative authority for upgrades when existing conditions show that there is adequate baseline data to support upgrades for a particular water body to occur at a future specified date.

BEP Jurisdiction: Commissioner Littell provided additional detail on the compliance history of the farm in Dixmont that was the subject of the request for Board jurisdiction. He explained that the DEP, the Department of Agriculture and the Federal government addressed compliance matters at the farm in July of 2007. Furthermore, the DEP has met with the new operator. Mr. Wren indicated that he will be a responsible operator and responsive to the concerns of the Dixmont citizens.

Questions:

Board member Nancy Ziegler asked about the timing for the new administration to amend or challenge recent rulings by EPA (e.g. changes to the Clean Air Act and Endangered Species Act).

While it may be a few weeks to determine the outcomes of some of the newly adopted rules, Commissioner Littell described his understanding of the general process where rules can be listed for suspension (within 60-days of presidential inauguration). The new administration is reviewing initiatives finalized at the end of the last administration and will initiate the federal appeal process for suspension/revocation as necessary. Maine has provided a list of items to be considered for suspension or revocation through the Environmental Council of States.

B. COMMENTS FROM THE BEP CHAIR: None

C. EXECUTIVE ANALYST COMMENTS:

Scribner's Mill – The Department has issued an order denying the application submitted by the Scribner's Mills Preservation Inc. It is possible that the Board will review this matter on appeal.

Legislative Report – The 2008 Summary of Activities Report was submitted to the Legislature this Monday. Board members were provided with a copy of the final report.

Board Jurisdiction – The Department received a request for Board jurisdiction on an application concerning a farm operation in Dixmont. The Commissioner has determined that the request does not meet the standards for a public hearing or Board jurisdiction. A copy of the Department's reply is available for Board members.

Calendar – The Board's meeting schedule for the month of February will remain unchanged (February 5th and February 19th); however, in an effort to save financial resources, we are currently considering eliminating the first regular meetings in March and April (March 5th and April 2nd). It was noted that throughout the calendar year Board staff will consider workload and seek additional meeting consolidation opportunities. In the meantime, Board members were asked to continue to hold all Board meeting dates in their calendars.

Board member Nancy Ziegler asked about the status of the Mallinckrodt appeal.

Ms. Bertocci stated that because this topic is not on the Board's agenda for discussion, her response to the question will be limited. Ms. Bertocci noted that Mallinckrodt filed a motion for an administrative stay of proceedings with the Chair and that motion is currently being evaluated. There is no new information on schedule at this point.

Board member Nancy Ziegler asked if Downeast LNG has filed an application; noting that the Coast Guard has approved the transportation route.

The Board's Executive Analyst confirmed that the U.S. Coast Guard has issued a waterway suitability finding for tanker traffic through Head Harbor Passage to Mill Cove. She mentioned that Calais LNG is planning to hold a pre-application meeting with the Department.

James Cassida elaborated for the Board, stating that the Department will be meeting with representatives of Downeast LNG on January 23rd to discuss the status of their project and the submission of any application.

D. BOARD CALENDAR: Reviewed.

E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING: None

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

The Board voted (8-0-0-1) on a motion to approve consent agenda items 1, 2, 3, and 4 as presented.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, P. Andrews Nixon, Don Guimond, Sue Lessard, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board member Matt Scott was absent. There is one vacancy.

1. HUSSON UNIVERSITY, BANGOR – Administrative Consent Agreement (BAQ)
2. JACOB THOMPSON, Vinalhaven – Administrative Consent Agreement (BLWQ – Land)
3. LOUISA IVES, Vinalhaven – Administrative Consent Agreement (BLWQ – Land)
4. ENVIRONMENTAL PROJECTS, INC., Auburn – Administrative Consent Agreement (BRWM)

III. Regular Agenda

1. CHAPTER 335, SIGNIFICANT WILDLIFE HABITAT / AMENDMENT (adoption)
Staff: Hetty Richardson, Bureau of Land and Water Quality

The Board voted (8-0-0-1) on a motion to adopt proposed amendments to Chapter 335, Significant Wildlife Habitat. Amendments to this rule update references to statute and rule, provide additional guidance on mitigation, clarify compensation requirements, and establish a 3 region approach to the identification of significant vernal pool habitat. The vote was taken pursuant to 38 M.R.S. Section 341-D(1-B) and 480-A to 480-FF.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board member Matt Scott was absent. There is one vacancy.

2. CHAPTER 125, PERCHLOROETHYLENE DRY CLEANER REGULATION – AMENDMENT (post to public hearing)
Staff: Andrea Lani, Bureau of Air Quality

The Board voted (8-0-0-1) on a motion to post amendments to Chapter 125, Perchloroethylene Dry Cleaner Regulations to public hearing. The proposed amendments incorporate new federal monthly monitoring requirements, establish a timeframe for repair of leaking equipment, and mandate the removal of (by 2020) units that are co-located in residential buildings. A public hearing is anticipated on Thursday, February 19, 2009 and the deadline for written public comment is March 2, 2009. The vote was taken pursuant to 38 M.R.S. §§ 341-D(1-B) and Section 585-A.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board member Matt Scott was absent. There is one vacancy.

3. CHAPTER 150, CONTROL OF EMISSIONS FROM OUTDOOR WOOD BOILERS / AMENDMENT (re-open record for additional written public comment)
Staff: Jeff Crawford, Bureau of Air Quality

The Board voted (8-0-0-1) on a motion to re-open the hearing record for an additional 30-day written comment period to receive comment on the following additional proposed amendments to Chapter 150: to amend sections 3.B(4) and 3.C.(4) to include a reduced setback and stack height for outdoor pellet boilers meeting a 0.06 lbs/MMBtu heat output emissions limit; and a proposal to establish the same reduced setback and stack height requirements for outdoor wood boilers meeting the same 0.06 lbs/MMBTU heat output emission limit. The deadline for written public comment was established as February 20, 2009. The vote was taken pursuant to 38 M.R.S. § 341-D(1-B) and 06-096 CMR Chapter 2.

Board members Elizabeth Ehrenfeld, M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board member Matt Scott was absent. There is one vacancy.

INFORMATION SESSION

Ocean Energy Taskforce – Beth Nagusky, Office of the Commissioner

It was explained that the basic charge of the Ocean Energy Task Force is to identify potential economic, technical, regulatory, and other obstacles to development of grid-scale offshore wind resources in Maine and federal coastal waters, and recommend solutions to overcome those obstacles.

The task force is currently meeting and researching tidal power and offshore wind power as potential initiatives to reduce dependence on fossil fuel. It was noted that the ability to build and assemble windpower components at coastal locations may promote economic development for Maine. Ms. Nagusky also reviewed some of the challenges identified by the task force (energy integration, jurisdictional and zoning/permitting issues, electrical regulatory restructuring, data gaps, funding for studies, etc.) and explained that the task force and its sub-committees will be making recommendations as part of their report back to the Legislature.